

REMARKS/ARGUMENTS

With regard to examiners rejection of Claims 21-23 under 35 U.S.C. 102(b) as being anticipated by Yu (5,939,395), it is the applicant's position that the function and features of the claimed invention are completely different from the teaching of Yu.

Yu teaches a method of purifying a phenolic compound having antioxidant properties and measuring antioxidative activity using standard assay methods.

In contrast, Claims 21-23 refer to a means of determining the effectiveness of a nutritional food supplement by identifying the free radical scavenging efficiency of antioxidants present in the food supplement.

With regard to the examiner's rejection of Claims 24-27 under 35 U.S.C. 103(a) as being unpatentable over the combination of Yu in view of Kelleher (6,051,571), Kelleher teaches a method of assaying furan nitron compounds using a promoter. As stated above, Yu teaches a method of purifying and assaying a phenolic compound.

In contrast, Claims 24-27 refer to a means of determining the effectiveness of a nutritional food supplement by identifying the free radical scavenging efficiency of antioxidants present in the food supplement.

As such, there is no specific or implied teaching in the references that is directed to a method of determining the effectiveness of a nutritional food supplement, as recited in Claims 24-27.

With regard to the examiner's rejection of Claims 28-29 under 35 U.S.C. 103(a) as being unpatentable over the combination of Yu in view of McLachlan (4,573,761), there is no specific or implied teaching in the references that is directed to a method of determining the effectiveness of a nutritional food supplement as recited in Claims 28-29.

With regard to the examiner's rejection of Claims 21-29 as being indefinite under 35 U.S.C. 112, second paragraph, it is the applicant's position that the terms "effectiveness of a nutritional food supplement", "specific antioxidants", "specific antioxidant properties", "key antioxidant ingredient", etc. have a proper antecedent basis in light of the supporting disclosure.

The specification recites, "An optical antioxidant sensing process (OASP) is used to evaluate the effectiveness of a given nutritional formulation." (page 4, lines 10-11); "The unique optical antioxidant sensing process (OASP) of the invention assays the free radical scavenging capability of specific antioxidant fortified cells...."(page 3, lines 21-23). "The free radical scavenging efficiency of the nutritional formulation is then calculated as shown in step 6 of Fig. 1 and an assay is made of the comparative effectiveness of the formulation as shown in step 7 of Fig. 1." (page 5, lines 4-6), "..... an antioxidant sample comprising a food-based source of a key phytonutrient or vitamin with antioxidant capabilities such as wheat germ oil (a source of vitamin E), as shown in step 40 of Fig. 2." (page 7, lines 5-7), "The antioxidant samples may include fresh whole foods, dried whole foods that are manufactured in supplement form, vitamins and phytonutrients synthesized and/or isolated, and pre-formulated nutritional supplements that are designed for the purpose of demonstrating antioxidant activity when administered orally."(page 9, lines 20-23). See MPEP 2173.05(c) and MPEP 2173.05 (e).

With reference to the examiner's comment regarding the last line of Claim 22, and how the measurements are used, it is the applicant's position that Claim 22 does recite how the measurements are used, i.e. "A process for determining the effectiveness of a nutritional food supplement by measuring the free radical scavenging efficiency of specific antioxidants present in the nutritional food supplement,... and calculating the free radical scavenging efficiency of said nutritional formulation using chemically tagged oxygen radical population measurements."

Appl. No. 09/814,151
Amdt. dated Sep. 19, 2003
Reply to Office action of 06/30/2003

With regard to the examiner's comment on Markush terminology in Claim 26, Claim 26 is rewritten in acceptable form.

With regard to the examiner's comment on Claim 28, line 7, as stated above, the term "key antioxidant ingredient" has a proper antecedent basis in the disclosure.

With regard to the examiner's requirement for a new title of the invention, the title is changed to: **PROCESS FOR EVALUATING THE EFFECTIVENESS OF NUTRITIONAL FORMULATIONS**

With regard to the examiner's objection to the Abstract of the Disclosure, a new abstract directed to the claimed invention is presented as follows:

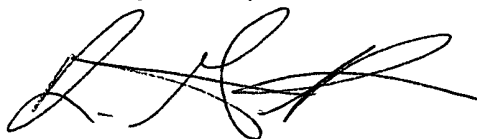
A process for evaluating the effectiveness of a nutritional formulation by measuring the free radical scavenging capability of antioxidants present in the formulation.

I have tried unsuccessfully to reach the examiner by telephone regarding this application and have left a message requesting a return call. If the examiner has any questions concerning this case, please direct any inquiries to Dr. Gina L. Nick at 1-866-587-4622 X702.

In view of the examiner's earlier restriction requirement, applicant retains the right to present claims 30-36 in a divisional application.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gina L. Nick', with a stylized, flowing script.

Dr. Gina L. Nick